

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: OFFICE OF CONSUMER ADVOCATE, Complainant, v. AT&T COMMUNICATIONS OF THE MIDWEST, INC., Respondent.	DOCKET NO. FCU-02-16 (C-02-164)
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ORDER DENYING MOTION TO DISMISS

(Issued September 9, 2002)

On September 6, 2002, AT&T Communications of the Midwest, Inc. (AT&T) filed a motion to dismiss and answer with the Utilities Board (Board). AT&T stated that the Consumer Advocate Division of the Department of Justice (Consumer Advocate) based its request for this formal proceeding on the following language used by the third party verifier: "Are you authorized by the billing party to make carrier changes *or change service* to the account" AT&T stated that this language is consistent with the Federal Communications Commission's (FCC) definition of an authorized subscriber, and that the Consumer Advocate's dissatisfaction with what is essentially the FCC's language does not provide a basis

on which relief can be granted. AT&T attached a transcription of the tape-recorded third-party verification that is the basis of this case.

In its motion, AT&T also stated it had credited the customer's account for the full amount in dispute, despite its belief it had not slammed the customer, and that the Consumer Advocate's attempt to continue the investigation and debate regarding Ms. Bennett's authorization of the switch to AT&T and then confusion about AT&T as the current service provider also failed to state a claim upon which relief may be granted. As part of this line of argument, AT&T stated that Ms. Bennett confirmed, unequivocally, that she was authorized by the billing party to change the carrier or service.

On September 6, 2002, the Consumer Advocate filed a response to the motion to dismiss, and requested that the motion be denied, without prejudice to renewal at hearing. The Consumer Advocate stated that the word on the tape recording with which it takes issue is "charge" not "change," so the sentence on the recording is: "Are you authorized by the billing party to make carrier changes or *charge* service to the account? The Consumer Advocate stated that the transcription of the recording provided by AT&T conforms to what the Consumer Advocate hears on the tape.

The sentence on the tape recording in the file in the Board Records Center is as follows: "Are you authorized by the billing party to make carrier changes or charge service to this account?" This is consistent with the transcription provided by AT&T. Ms. Bennett's answer to this question, particularly taken within the context of

the entire conversation, is not an unequivocal statement that she is authorized to change carriers or service on the account.

Therefore, the motion to dismiss should be denied.

IT IS THEREFORE ORDERED:

The motion to dismiss filed by AT&T Communications of the Midwest, Inc. on September 6, 2002, is hereby denied.

UTILITIES BOARD

/s/ Amy L. Christensen
Amy L. Christensen
Administrative Law Judge

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 9th day of September, 2002.